



2009 ASSEMBLY BILL 419

1 **AN ACT** *to renumber and amend* 949.04 (2); and *to create* 901.08, 950.04 (1v)
2 (er), 971.23 (5c) and 971.23 (6c) of the statutes; **relating to:** rape shield
3 provisions in civil proceedings, discovery and inspection of victims and
4 witnesses, and victims rights.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 901.08 of the statutes is created to read:
6 **901.08 Admissibility of sexual conduct. (1)** In this section:
7 (a) “Sexual conduct” means any conduct or behavior relating to sexual
8 activities, including prior experience of sexual intercourse or sexual contact, use of
9 contraceptives, and sexual life–style.
10 (b) “Sexual misconduct” includes a violation of s. 940.22 (2), 940.225 (1), (2), or
11 (3), 940.32, 942.08, 942.09, 948.02, 948.025, 948.05 (1) or (1m), 948.055 (1), 948.06,

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1 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, or 948.11 (2) and includes sexual
2 harassment, as defined in s. 111.32 (13).

3 (c) “Victim” means a person against whom sexual misconduct allegedly has
4 been committed.

5 (2) In a civil action involving damages for an injury resulting from sexual
6 misconduct, any evidence concerning a victim’s sexual conduct, opinions of the
7 victim’s sexual conduct, and reputation as to the victim’s sexual conduct, offered to
8 prove that the victim engaged in other sexual conduct or to prove the victim’s sexual
9 predisposition may not be admitted into evidence during the course of any hearing
10 or trial, nor may any reference to such sexual conduct be made in the presence of the
11 jury, except the following:

12 (a) Evidence of the specific, consensual sexual conduct between the alleged
13 offender and the victim.

14 (b) Evidence of specific instances of sexual conduct by the alleged victim after
15 an in camera showing by the party requesting the admission that the sexual conduct
16 was the actual cause of the victim’s injury for which damages are requested in the
17 action.

18 **SECTION 2.** 949.04 (2) of the statutes is renumbered 949.04 (2) (a) and amended
19 to read:

20 949.04 (2) (a) The department shall prescribe application forms for awards
21 under this subchapter and. If the application results from the commission of or the
22 attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025,
23 948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that
24 was sexually motivated, as defined in s. 980.01 (5), any personally identifiable

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1 information, as defined in s. 19.62 (5), provided on the application form is not subject
2 to inspection or copying under s. 19.35 (1).

3 (b) The department shall furnish law enforcement agencies with the forms
4 under par. (a). The law enforcement agency investigating a crime shall provide forms
5 to each person who may be eligible to file a claim under this subchapter.

6 **SECTION 4.** 950.04 (1v) (er) of the statutes is created to read:

7 950.04 **(1v)** (er) To not be compelled to submit to a pretrial interview or
8 deposition by a defendant or his or her attorney as provided under s. 971.23 (6c).

9 **SECTION 5.** 971.23 (5c) of the statutes is created to read:

10 971.23 **(5c)** PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES. In a prosecution of
11 s. 940.225, 948.02, or 948.025 or of any other crime if the court determines that the
12 underlying conduct was sexually motivated, as defined in s. 980.01 (5), the court may
13 not order any witness or victim, as a condition of allowing testimony, to submit to a
14 psychiatric or psychological examination to assess his or her credibility.

15 **SECTION 6.** 971.23 (6c) of the statutes is created to read:

16 971.23 **(6c)** INTERVIEWS OF VICTIMS BY DEFENSE. Except as provided in s. 967.04,
17 the defendant or his or her attorney may not compel a victim of a crime to submit to
18 a pretrial interview or deposition.

19 **SECTION 7. Initial applicability.**

20 (1) The treatment of section 971.23 (5c) of the statutes first applies to
21 complaints filed on the effective date of this subsection.

22 (END)